

Evidence and Other Legislation Amendment Regulation 2025

Explanatory notes for SL 2025 No. 122

Made under the

Evidence Act 1977

Supreme Court of Queensland Act 1991

General Outline

Short Title

Evidence and other Legislation Amendment Regulation 2025

Authorising law

Sections 103ZZGA, 129AG and 135 of the *Evidence Act 1977*

Section 92 of the *Supreme Court of Queensland Act 1991*

Policy objectives and the reasons for them

The purpose of the *Evidence and Other Legislation Amendment Regulation 2025* (the Amendment Regulation) is to:

- prescribe the Childrens Court in Brisbane, Townsville, Caboolture, Cleveland and Redcliffe as places where the sexual offence expert evidence panel may be engaged;
- prescribe notice requirements for a party seeking to adduce tendency evidence or coincidence evidence in a criminal proceeding;
- amend the *Uniform Civil Procedure (Fees) Regulation 2019* (UCPR (Fees)) to exempt a person applying for a complainant privacy order from paying a fee; and
- correct a previous typographical error which has resulted in an incorrect filing fee.

Prescribing the Childrens Court in Brisbane, Caboolture, Cleveland, Redcliffe and Townsville as places where the Sexual Offence Expert Evidence Panel may be engaged

The court, in a relevant proceeding, may engage a member of the sexual offence expert evidence panel to give evidence on the nature of sexual offences and the factors that might affect the behaviour of an alleged victim of a sexual offence if the court considers there is a good reason to call an expert.

A 'relevant proceeding' is defined in section 103ZZGA of the *Evidence Act 1977* (Evidence Act) as a criminal proceeding relating wholly or partly to a sexual offence and held before a court at a place prescribed by regulation.

Section 4C of the *Evidence Regulation 2017* (the Evidence Regulation) currently prescribes the Brisbane and Townsville Supreme and District Court and the Brisbane, Caboolture, Cleveland, Redcliffe and Townsville Magistrates Courts.

The Amendment Regulation prescribes the Childrens Court, in existing locations where the sexual offence expert evidence panel may be engaged by a court in a 'relevant proceeding' (being Brisbane, Caboolture, Cleveland, Redcliffe and Townsville), as prescribed places. This allows for the court to engage a member of the sexual offence expert evidence panel to give expert evidence in proceedings relating wholly or partly to a sexual offence before the Childrens Court.

Prescribing notice requirements for adducing tendency evidence or coincidence evidence

The admissibility of tendency evidence and coincidence evidence is codified within Part 7A of the Evidence Act. Sections 129AD(1)(a) and 129AF(1)(a) of the Evidence Act require a party seeking to adduce tendency evidence or coincidence evidence to give reasonable notice of their intention to adduce that evidence as an admissibility threshold. Section 129AG of the Evidence Act provides that notice must be given in accordance with any requirement prescribed by regulation.

The Amendment Regulation prescribes the content of the notice to be given, including:

- a statement as to whether the party giving the notice seeks to adduce tendency evidence or coincidence evidence;
- the substance of the evidence to which the notice relates;
- particulars of the conduct or event to which the evidence relates (to the extent known by the party giving the notice); and
- the name of each person who saw, heard or otherwise perceived the conduct or event (to the extent the identity of the person is known by the party giving the evidence).

These requirements are modelled on the notice requirements in New South Wales, which the Women's Safety and Justice Taskforce recommended as the model for Queensland.

Exempting payment of a filing fee for complainant privacy order applications

Complainant privacy orders were introduced to the Evidence Act by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*. Complainant privacy orders prohibit or restrict the publication of identifying information about a complainant of a sexual offence who is deceased.

A person with sufficient interest may apply to a court for this order. A court may make this order if satisfied that it is necessary to avoid causing undue distress to the applicant, and if the court is satisfied that the particular circumstances make it necessary to displace public interests in the principles of open justice and freedom of expression, including free communication and disclosure of information.

An application for a complainant privacy order may be heard in a court's civil jurisdiction or criminal jurisdiction, depending on the method of filing. No filing fees apply for applications filed in the criminal jurisdiction. However, where an application is filed in the court's civil jurisdiction, the UCPR (Fees) will apply.

The requirement for payment of a filing fee does not align with the protective intent of a complainant privacy order. The Amendment Regulation addresses this issue by exempting a person filing an application for a complainant privacy order from paying a fee. This also achieves consistency with other, comparable applications under the Evidence Act that do not attract fees, such as applications for non-publication orders.

Correcting the filing fee payable for an application that is an originating process

On 1 July 2024, section 231 of the *Justice and Other Legislation Amendment Act 2023* (JOLAA) amended various items in Schedule 1 of the UCPR (Fees) to incorporate the historical Appeal Costs Fund fee into originating process fees. However, due to a typographical error, section 231(3) of JOLAA specified the fee payable under item 1(2)(a) of Schedule 1 of the UCPR (Fees) as 2,991.90 fee units rather than 2,911.90 fee units.

The Amendment Regulation will apply the correct filing fee of 2,911.90 fee units for item 1(2)(a) retrospectively from 1 July 2024.

Achievement of policy objectives

The policy objectives are achieved by:

- prescribing the Childrens Court in Brisbane, Townsville, Caboolture, Cleveland and Redcliffe as places under the definition of a ‘relevant proceeding’ in section 103ZZGA of the Evidence Act;
- prescribing notice requirements for parties seeking to adduce tendency evidence or coincidence evidence;
- exempting a person filing an application for a complainant privacy order from paying a fee in Schedule 1 and 2 of the UCPR (Fees); and
- correcting a typographical error for a filing fee payable under the UCPR (Fees).

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the Evidence Act.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Amendment Regulation will support the notice requirements contained within the Evidence Act by prescribing notice requirements. This will give practitioners and the court clarity on how parties are required to give notice.

Any costs for government associated with expanding the scope of the pilot, or by refunding affected applicants who paid the incorrect filing fee, will be met from within existing resources.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

Heads of Jurisdiction (including the Chief Justice, the Chief Judge, the President of the Childrens Court and the Chief Magistrate) and the Expert Evidence Panel Steering Committee were consulted.

Relevant legal stakeholders were also consulted.

Feedback received was taken into account in finalising the Amendment Regulation.

An Impact Analysis Statement has been completed that identifies that the Amendment Regulation is not subject to regulatory impact assessment requirements under the *Queensland Government Better Regulation Policy*. This is because it is a regulatory proposal that relates to the administration of courts and tribunals or is otherwise machinery in nature.